No. 813

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

BERNARD SHAPIRO, WELFARE COMMISSIONER OF THE STATE OF CONNECTICUT,

Appellant,

vs.

VIVIAN THOMPSON,

Appellee.

AMICUS CURIAE BRIEF OF THE STATE OF OHIO IN SUPPORT OF THE BRIEF OF BERNARD SHAPIRO, WELFARE COMMISSIONER OF THE STATE OF CONNECTICUT, APPELLANT

REASONS FOR ENTERING APPEAL AS AMICUS CURIAE

There is a somewhat similar action presently pending in the U. S. District Court for the Northern District of Ohio, Eastern Division. A final adjudication of the constitutional questions raised by the instant appeal could have an effect on several cases which have been or may be brought in the many states which have statutory residency requirements for welfare recipients similar to the one of the State of Connecticut, challenged herein, which statutes have been

promulgated by the state legislatures in accordance with the classification established by the Congress of the United States in Section 602(b), Title 42, U. S. C. A.

Although the Ohio statutes are not identical in language and application to that of Connecticut herein challenged, the statutes are similar in principle. Therefore, in order to preserve the right of a state legislature to determine the economic policies of the state and to define the responsibility of the state in providing assistance to the needy within the jurisdiction of the state, the State of Ohio enters this case as *amicus curiae* by authority of Rule 42, Paragraph 4 of the Rules of the Supreme Court of the United States, in support of the argument and position of Bernard Shapiro, Welfare Commissioner of Connecticut.

ARGUMENT

As ably set forth in the argument of the Appellant, there are many sound bases for critical review of the opinion of the United States District Court for the District of Connecticut. For purposes of emphasis, some of the basic objections are set forth in brief herein.

The Statutory Requirement As To Residency Is Neither An Arbitrary Nor An Unreasonable Classification.

The authority for a state legislature to enact a statute which requires that an applicant for assistance under an Aid for Dependent Children program shall meet a residency requirement of one year or less is expressly provided by the United States Code.

Section 602 b, Title 42, U.S.C.A. enacted in 1935 reads as follows:

"(b) The Secretary shall approve any plan which

fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes as a condition of eligibility for aid to families with dependent children, a residence requirement which denies aid with respect to any child residing in the State (1) who has resided in the State for one year immediately preceding the application for such aid, or (2) who was born within one year immediately preceding the application, if the parent or other relative with whom the child is living has resided in the State for one year immediately preceding the birth."

It can therefore be seen that the original determination as to the propriety of the classification challenged herein was made by the Congress of the United States and not solely by the state legislature which enacted the statute in accordance therewith.

A Sovereign State May Not Be Sued Without Its Consent.

The damages awarded in the court below were in essence awarded against the State of Connecticut. It is well established in the jurisprudence of all civilized nations that the sovereign cannot be sued in its own courts or in any other court without its consent and permission. The right of individuals to sue a state in either a Federal or state court cannot be derived from the Constitution or laws of the United States, but can come only from the consent of the state.

Palmer v. *Ohio*, 248 U.S. 32, 63 L. ed. 108; 39 S. Ct. 16; *Beers* v. *Arkansas*, 20 How. 527; 15 L. ed. 991; *Memphis & C. R. Co.* v. *Tennessee*, 101 U. S. 337, 25 L. ed. 960; *Hans* v. *Louisiana*, 134 U. S. 1, 33 L. ed. 842, 10 Sup. Ct. Rep. 504.

There Is No Vested Right To Public Assistance.

There is no legal obligation at common law on any of the instrumentalities of government to furnish relief to the

indigent. The only obligation to support must result from some constitutional or statutory provision imposing a legal obligation. Therefore, when a state elects to furnish relief to its poor and needy, a large measure of discretion is vested in the legislature to determine what measures are necessary to promote the public welfare. Citation on next page.

People ex rel. Heydenreich v. *Lyons*, 374 Ill. 557, 30 N.E. 2d 46, 132 ALR 511.

It has been held that no indigent or class of indigents can acquire a vested right to be cared for by the public in any particular manner. Re Snyder, 93 Wash. 59, 160 P 12, 3 ALR 1230, aff. 248 U.S. 539, 63 L. ed. 410, 39 S. Ct. 67; *Magoun* v. *Illinois Trust & Sav. Bank*, 170 U.S. 283, 293, 42 L. ed. 1037, 1042, 18 Sup. Ct. Rep. 594; *Atchison, T. & S. F. R. Co.* v. *Matthews*, 174 U.S. 96, 103, 43 L. ed. 909, 912, 19 Sup. Ct. Rep. 609; *Clark* v. *Kansas City*, 176 U.S. 114, 119, 44 L. ed. 392, 397, 20 Sup. Ct. Rep. 284; *Lindsley v. Natural Carbonic Gas Co.* 220 U.S. 61, 78, 55 L. ed. 369, 377, 31 Sup. Ct. Rep. 337, Ann. Cas. 1912C, 160.

The Civil Rights Act Does Not Extend The Equitable Jurisdiction Of The Federal Courts.

It has been consistently held since the enactment of Section 1983, Title 42, U.S.C.A. that this act has created no new rights and has not extended the equity jurisdiction of the federal courts. It only secures rights, privileges and immunities secured by the Constitution and Federal Laws.

Kenney v. *Killian* 133 F. Supp 571 aff. 232 F2 288; *Stiltner* v. *Rhay*, C.A. Wash. 1963, 322 F 2d 314; *Giles* v. *Harris*, Ala. 1903, 23 S. Ct. 639, 189 U.S. 475, 47 L. ed. 909; *Progress Development Corp.* v. *Mitchell*, D.C. Ill 1960, 182 F. Supp 681, aff in part 286 F 2d 222.

The State of Ohio therefore adopts and joins in the argument of Bernard Shapiro, Welfare Commissioner of the State of Connecticut for the reversal of the opinion of the United States District Court for the District of Connecticut.

Respectfully submitted,

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